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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/728,096	12/01/2000	Rajendra Kumar Bera	JA999-704	4541
30449	7590	09/08/2006	EXAMINER	
SCHMEISER, OLSEN & WATTS			VO, TED T	
22 CENTURY HILL DRIVE				
SUITE 302			ART UNIT	PAPER NUMBER
LATHAM, NY 12110			2191	

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b><i>Interview Summary</i></b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/728,096	BERA, RAJENDRA KUMAR
	<b>Examiner</b>	<b>Art Unit</b>
	Ted T. Vo	2191

All participants (applicant, applicant's representative, PTO personnel):

(1) Ted T. Vo. (3) \_\_\_\_\_.

(2) Applicants' representative, Jack Friedman. (4) \_\_\_\_\_.

Date of Interview: 30 August 2006.

Type: a) Telephonic b) Video Conference  
c) Personal [copy given to: 1) applicant 2) applicant's representative]

Exhibit shown or demonstration conducted: d) Yes e) No.  
If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: All.

Identification of prior art discussed: N/A.

Agreement with respect to the claims f) was reached. g) was not reached. h) N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.



Examiner's signature, if required

## Summary of Record of Interview Requirements

### **Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record**

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### **Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews**

#### **Paragraph (b)**

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### **37 CFR §1.2 Business to be transacted in writing.**

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney\*or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  

(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

### **Examiner to Check for Accuracy**

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments:

Applicants' representative, Jack Friedman, sent an Agenda of four issues for discussing/arguing the rejections/objections in the final office action mailed on 7/25/06. Examiner asked Mr. Friedman to file a request for reconsideration that includes the discussing/arguing of the four issues. Upon filing the request for reconsideration, including the arguments as shown in the Agenda, the objection of new subject matter, rejections of 112 first paragraph, DP, and 101, will be withdrawn appropriately.

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R-02

Continuation Sheet (PTOL-413)

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Jack Friedman

From: Jack Friedman  
Sent: Tuesday, August 01, 2006 12:12 PM  
To: 'wei.zhen@uspto.gov'  
Subject: Appl. No. 09/728,096: Interview Agenda For August 30

To: Examiner Wei Y. Zhen  
From: Jack P. Friedman

In connection with our telephonic interview scheduled for August 30 at 1:00PM, which will include Examiner Ted Vo, the purpose of the interview is to resolve, if possible, all non-prior art issues. These issues include:

1) Objection to the abstract on grounds of adding new matter. The Examiner objected to the reciting of "the source code is compiled into object code" in the abstract as allegedly not disclosing the specification. However, the specification discloses "compiler optimization of source code". Note that a compiler, by definition, compiles source code into object code as has been known and understood in the field of computer programming for over the past 50 years. Note that a compiler is defined as: "A unit that converts computer programs written in higher-level languages, such as FORTRAN and BASIC, into the machine language (object code) of the computer". See "Modern Dictionary of Electronics" 184 (sixth ed. 1997). A compiler must compile source code into object code; otherwise it cannot be a compiler. Therefore, disclosure of "compiler optimization of source code" states that a compiler is being used to implement the present invention and therefore inherently performs compiler optimization of source code as part of compiling the source code into object code. If the Examiner can find any evidence to support his allegation that a compiler is not required to compile source code into object code, then the Examiner should present such evidence. Ask any computer programmer if a compiler is not required to compile source code into object code.

2) Nonstatutory Double patenting. The Examiner rejected claims 1, 6, and 7 on grounds of judicial double patenting, which repeated the double patenting rejection stated in the prior office action mailed 02/13/2006. Since claims 9, 14, and 19 were not alleged to be subject to a double-patenting rejection, Applicant amended claims 1, 6, and 7 by incorporating the limitations of claims 9, 14, and 19 into claims 1, 6, and 7, respectively, in order to overcome the double-patenting rejection. However, the Examiner does not recognize the amendment of claims 1, 6, and 7, because the Examiner alleges that the amended material ("compiling source code into object code") is not supported in the specification. If that is the case, why did the Examiner not indicate in the office action mailed 02/13/2006 that claims 9, 14, and 19 are not supported in the specification when Applicant could have had an opportunity to find another way to amend claims 1, 6, and 7 to overcome the double patenting rejection of claims 1, 6, and 7? Applicant requests that the present final office action be changed to a non-final office action so that Applicant can amend claims 1, 6, and 7 to overcome the double patenting rejection if necessary, since Applicant was previously misled into thinking that the subject matter of claims 9, 14, and 19 could be used to overcome the double patenting rejection.

3) 35 USC 112, first paragraph and second paragraph, based on the Examiner's allegation that the amended limitations ("compiling source code into object code") is not supported in the specification. However, this is a new ground of rejection not caused by Applicant's amendment of claims 1, 6, and 7, since the amended claims 1, 6, and 7 incorporates the limitation ("compiling source code into object code") of claims 9, 14, and 19 into claims 1, 6, and 7, respectively, and claims 9, 14, and 19 were not previously rejected on grounds of 35 USC 112, first paragraph and second paragraph. Therefore, the present final office action should be changed to a non-final office action if the Examiner still views "compiling source code into object code" as not being supported in the specification.

4) 35 USC 101.

4A) The Examiner alleges that "compiling source code into object code" is an intended use. The Examiner is correct in stating that the language "for use in compiler optimisation of source code ..." in the preamble is an intended use. However, the language of "compiling source code into object code" in the body of the claim, and not in the preamble, is an active method step and is not an intended use.

4B) The Examiner also analogizes compiling source code into object code" to transmitting electrical signals to represent the results of calculations to support the Examiner's contention that "compiling source code into object

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# Continuation Sheet (PTOL-413)

"code" does not recite a practical application, which is a totally incorrect analogy. Compiling source code into object code changes code from a non-executable form (which is not a practical form) to an executable form (which is a practical form). Therefore, compiling source code into object code is not analogous to transmission of an electrical signal that represents the results of calculations, which merely transmits the calculational results from one place to another.

In summary, please consider the arguments presented above. However, I am open to other suggestions by you and Examiner Vo for resolving the above issues. If you still consider the limitation of "compiling source code into object code" to not be supported in the specification, then I would appreciate converting the present final office action to a non-final office action for the reasons stated above, so that I can amend the claims in a manner that we all agree would resolve the preceding issues.

If you should have any thoughts about these issues that you would like me to think about before the interview, please do not hesitate to communicate any such ideas to me. I look forward to working with you and Examiner Vo to resolve the preceding issues.

Thanks.

Jack P. Friedman, Ph.D.  
Reg. No. 44,688  
SCI IMEISER, OLSEN & WATTS  
22 Century Hill Drive - Suite 302  
Latham, New York 12110  
Tel. # (518) 220-1850  
Fax # (518) 220-1857